

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

BKY No. 09-40058

Imagetechn Services Corporation,

Chapter 7 Bankruptcy

Debtor.

**NOTICE OF HEARING AND EXPEDITED MOTION FOR AN ORDER
AUTHORIZING SALE OF ASSETS FREE AND CLEAR OF LIENS**

To: Parties specified in Local Rule 9013-3.

1. Dwight R.J. Lindquist, the duly-appointed Chapter 7 Trustee in the above-referenced bankruptcy case ("**Trustee**"), moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion at 11:00 a.m. on February 6, 2009, before the Honorable Nancy C. Dreher, United States Bankruptcy Court, Courtroom 7 West, 300 South Fourth Street, Minneapolis, Minnesota 55415.

3. As this Motion is brought on an expedited basis, any response to this motion must be filed and served by delivery as soon as possible and suggestion is made that a response should be filed at least twenty-four (24) hours prior to hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Rule 5005 of the Federal Rules of Bankruptcy Procedure ("**Bankruptcy Rules**"), and Local Rules 1070-1 and 1073-1. This is a core proceeding. This case was commenced as a voluntary Chapter 7 proceeding on January 6, 2009. The case is now pending before this Court.

5. This Motion arises under 11 U.S.C. §363(b)(f) and (m) and Bankruptcy Rule 6004. The Trustee seeks to sell all of the Debtor's assets ("**Property**") by way of auction.

6. The sale will be free and clear of the interests of any parties. The net proceeds of the sale would be subject to any secured party's interests and would be held in the Trustee's trust account subject to further order of the Court. However, it is not believed that the Property is subject to a perfected lien.¹

7. The Trustee has retained the auctioneering firm of Fred W. Radde & Sons, Inc. to conduct the auction of the Property. Pursuant to the terms of such retention, the auctioneer is entitled to payment of his commission, debris removal cost and reimbursement of his bond expense, as more fully set forth in the application to employ, from the sale proceeds. Copies of the applications and orders approving the retention of Fred W. Radde & Sons, Inc. are on file with the Court.

8. Expedited relief is required as the estate is incurring costs storing and insuring the Property. The passage of time will result in the Debtor's assets losing value and will increase the administrative claims.

9. Pursuant to Local Rule 9013-2(c), the Debtor gives notice that he may, if necessary, testify at the hearing regarding the proposed sale.

¹ The Trustee has commenced an action to avoid the purported lien claim by CEI, Inc.

WHEREFORE, the Debtor moves the Court for an order authorizing an expedited sale of assets of the Debtor free and clear of interests and granting such other relief as the Court may deem just and equitable.

**LEONARD, O'BRIEN
SPENCER, GALE & SAYRE, LTD.**

Dated: January 29, 2009

/e/ Matthew R. Burton
By _____
Matthew R. Burton, #210018
Attorneys for Dwight R.J. Lindquist, Trustee
100 South Fifth Street, Suite 2500
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VERIFICATION

I, Dwight R. J. Lindquist, Trustee of the Bankruptcy Estate of Imagetech Services Corporation, the moving party named in the foregoing Notice of Hearing and Expedited Motion for an Order Authorizing Sale of Assets Free and Clear of Liens, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: January 29, 2009

/e/ Dwight R. J. Lindquist

Dwight R. J. Lindquist, Trustee

394822

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

BKY No. 09-40058

Imagetechn Services Corporation,

Chapter 7 Bankruptcy

Debtor.

**MEMORANDUM IN SUPPORT OF MOTION FOR AN ORDER AUTHORIZING SALE
OF ASSETS OF DEBTOR FREE AND CLEAR OF INTERESTS**

Dwight R.J. Lindquist, Trustee ("**Trustee**") requests that the Court enter an order Authorizing Sale of Assets Free and Clear of Interests. This request is made on an expedited basis.

FACTS

The Trustee seeks to sell all of its assets by way of auction. The Trustee will not be selling the estate's liquid assets. It is not believed that there are valid liens on the personal property.

The Trustee believes that the best way to realize value from the assets of the estate is to sell the same by way of auction.

The asset sale will be free and clear of all liens and other interests. The net sale proceeds will remain subject to any valid liens and will be placed in the Trustee's bank deposit account subject to further order of this Court, which the Trustee expects to be an order approving disbursement to creditors.

ARGUMENT

A. The Proposed Sale Satisfies the Business Judgment Test and is in the Best Interest of the Estate.

The Trustee's application of his sound business judgment in the use, sale or lease of property is subject to judicial deference. *In re Curlew Valley Assocs.*, 14 B.R. 506, 513-14 (Bankr. D. Utah 1981). *See also, In re Moore*, 110 B.R. 924, 928 (Bankr. C.D. Cal. 1990); *In re Canyon Partnership*, 55 B.R. 520, 524 (Bankr. S.D. Cal. 1985). However, section 363(b)(1) of the Bankruptcy Code

requires court approval, after notice and hearing, for sales outside of the ordinary course of business.

11 U.S.C. § 363(b)(1). In interpreting sections 363(b)(1), courts have held that a transaction involving property of the estate generally should be approved so long as the Trustee can demonstrate "some articulated business justification for using, selling, or leasing property outside of the ordinary course of business." *In re Continental Airlines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986); *accord In re Lionel Corp.*, 722 F.2d 1063, 1071 (2nd Cir. 1983).

Many courts have set forth factors to consider when approving a sale outside the ordinary course, and most courts start with the factors set forth by the Second Circuit in *In re Lionel*. Those factors are:

the proportionate value of the asset to the estate as a whole, the amount of elapsed time since the filing, the likelihood that a plan of reorganization will be proposed and confirmed in the near future, the effect of the proposed disposition on future plans of reorganization, the proceeds to be obtained from the disposition vis-a-vis any appraisals of the property, which of the alternatives of use, sale or lease the proposal envisions and, most importantly perhaps, whether the asset is increasing or decreasing in value.

In re Lionel, 722 F.2d at 1071. Other courts have simplified the factors to include, *inter alia*, the consideration to be paid, the financial condition and needs of the debtor, the qualifications of the buyer, and whether a risk exists that the assets proposed to be sold would decline in value if left in the debtor's possession. *See Equity Funding Corp. of America v. Financial Associates (In re Equity Funding Corp.)*, 492 F.2d 793, 794 (9th Cir. 1974). *See also In re Titusville Country Club*, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991) (setting forth four elements of a "sound business purpose" test: (1) a sound business reason, (2) accurate and reasonable notice, (3) adequate price, and (4) good faith).

In light of the plain language of 11 U.S.C. §363(b)(1), which only requires "notice and hearing" before a sale and does not set out factors to consider, the Second Circuit in *Lionel* observed that:

A bankruptcy judge must not be shackled with unnecessarily rigid rules when

exercising the undoubtedly broad administrative power granted him (sic) under the code. As Justice Holmes once said in a different context, 'Some play must be allowed for the joints of the machine . . .'

The price to be received for the assets is believed to be fair. Generally, "the best way to determine the market value of the property is to expose the property to the marketplace. *In re Mama's Original Foods, Inc.*, 234 B.R. 500, 504 (Bankr. C.D. Cal. 1999) (citing *Bank of America NT & SA v. 203 North LaSalle Street Partnership*, 526 U.S. 434 (1999)). An auction will deliver a marketplace price for the estate.

The proposed sale is supported by business justifications. The price to be paid will be fair and reasonable. The sale is consistent with progress towards liquidating this estate. All aspects of this transaction have been undertaken in good faith with adequate disclosure to interested parties. Accordingly, the sale should be allowed to proceed on the terms outlined above.

B. The Trustee May Sell the Assets Free and Clear of Liens.

The Trustee seeks to sell virtually all of the estate's assets free and clear of all liens, claims and interests of all claimants and lien holders. Section 363(f) of the Bankruptcy Code provides:

The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if –

- (i) applicable non-bankruptcy law permits sale of such property free and clear of such interest;
- (ii) such entity consents;
- (iii) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of such interest;
- (iv) such interest is in bona fide dispute; or
- (v) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. §363(f). Any one of the five conditions, including the "consent" of the lienholders, provides authority to sell free and clear of liens. *See Citicorp Homeowners Services, Inc. v. Elliot*

(*In re Elliot*), 94 B.R. 343, 345 (E.D. Pa. 1988). To the extent a secured creditor or lienholder that receives notice does not file a written objection to the Motion, such party should be deemed to have consented to the sale. *In re Shary*, 152 B.R. 724, 725-26 (Bankr. N.D. Ohio 1993).

The Trustee believes that there are no valid liens on the assets of the estate.

C. The Transaction Described in the Purchase Agreement is in Good Faith

"[W]hen a bankruptcy court authorizes a sale of assets pursuant to section 363(b)(1), it is required to make a finding with respect to the 'good faith' of the purchaser." *In re Abbotts Dairies, Inc.*, 788 F.2d 143, 149-50 (3rd Cir. 1986). The purpose of such a finding is to facilitate a safe-harbor determination under section 363(m), which protects purchasers of a debtor's property when the purchase is made in "good faith." 11 U.S.C. §363(m). Section 363(m) provides:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale of lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed in pending appeal.

11 U.S.C. §363(m). This provision serves the important purposes of encouraging good faith transactions and of preserving the finality of the bankruptcy court's order unless stayed pending appeal. *In re Abbotts Dairies*, 788 F.2d at 147. In this case, the Purchaser will be clearly entitled to the safe harbor provided by section 363(m). If the Court approves the sale as requested in the Motion, it should also invoke section 363(m) to protect the Purchaser's acquisition of the assets by explicitly finding that the Purchaser acted in good faith.

D. Expedited Relief

Expedited relief is required to protect the value of assets of the estate. The Trustee requests expedited relief so as to maximize the assets of this estate. See Local Rule 9006-1(d).

CONCLUSION

For the reasons and based on the arguments and authorities set forth above, the Trustee respectfully requests that this Court enter an Order granting the relief requested in the Motion.

**LEONARD, O'BRIEN
SPENCER, GALE & SAYRE, LTD.**

Dated: January 29, 2009

/e/ Matthew R. Burton
By _____
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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

BKY No. 09-40058

Imagetechn Services Corporation,

Chapter 7 Bankruptcy

Debtor.

UNSWORN CERTIFICATE OF SERVICE

I hereby certify that on January 29, 2009, I caused the following documents:

*Notice of Hearing and Expedited Motion for an Order Authorizing Sale of Assets
Free and Clear of Liens, Memorandum of Law and Order (proposed)*

to be filed electronically with the Clerk of Court through ECF, and that ECF will send an e-notice of the electronic filing to the following:

- John D. Lamey bankrupt@lameylaw.com, shari@lameylaw.com,
blair@lameylaw.com, ewright@lameylaw.com
- US Trustee ustregion12.mn.ecf@usdoj.gov

I further certify that I caused a copy of the foregoing documents to be mailed by first class mail, postage paid, to the following non-ECF participants:

SEE ATTACHED SERVICE LIST

Dated: January 29, 2009

/e/ Stephanie Wood

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BKY CASE NO. 09-40058
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DES MOINES IA 50368-9061

PLP DIGITAL SYSTEMS
2300 CLARENDON BLVD STE 711
ARLINGTON VA 22201

POPP TELECOM
PO BOX 27110
GOLDEN VALLEY MN 55427

POSTMASTER
MPLS MBEU ATTN WINDOW D-12
3501 BROADWAY ST NE
MINNEAPOLIS MN 55413-9651

PRINTER MAINTENANCE CO
15395 - 31ST AVE N #4
PLYMOUTH MN 55447

PRINTERS SERVICE INC
50 NORTH 31ST AVE
MINNEAPOLIS MN 55411

PRIORITY COURIER EXPERTS
PO BOX 10528
WHITE BEAR LAKE MN 55110

PROFESSIONAL OFFICE SERVICES INC
PO BOX 450
WATERLOO IA 50704-0450

QUALITY FORKLIFT SALES
587 CITATION DRIVE
SHAKOPEE MN 55379

QUALITY REFRIGERATION INC
6237 PENN AVE S
RICHFIELD MN 55423

QWEST
PO BOX 173821
DENVER CO 80217-3821

RAYVEN
431 N GRIGGS ST
SAINT PAUL MN 55104

REGINALD SELICK
7817 ASTER
BROOKLYN PARK MN 55428

REPROMAX
15450 S OUTER 40 STE 115
CHESTERFIELD MO 63017-6027

RESOLUTION GRAPHICS INC
3725 DUNLAP ST N
ARDEN HILLS MN 55112

ROBERT FAHS
7421 LYNDAL AVE SO #51
RICHFIELD MN 55423

ROCHESTER PUBLIC UTILITIES
4000 EAST RIVER RD NE
ROCHESTER MN 55906-2813

ROLATAPE CORPORATION
2701 NORTH VAN METER DRIVE
SPOKANE WA 99206

ROSACKERS
2315 18TH AVE NE
MINNEAPOLIS MN 55414

ROTOLITE
7581 W 103RD AVE
WESTMINSTER CO 80021

ROUSE MECHANICAL INC
7320 OXFORD ST
ST LOUIS PARK MN 55426

RYAN REKOWSKI
12900 PENN AVE S
APT 270
BURNSVILLE MN 55337

S&O CORPORATION
PO BOX 167
GALLAWAY AL 35036

SAFCO PRODUCTS
SDS 12-0752
PO BOX 86
MINNEAPOLIS MN 55486-0752

SAFELITE GLASS CORP
PO BOX 633197
CINCINNATI OH 45263-3197

SCHONSTEDT INSTRUMENT CO
100 EDMOND RD
KEARNEYSVILLE WV 25430

SECO
PO BOX 3592
REDDING CA 96049

SERVICE WHOLESALE INC
2825 HENKLE DRIVE
CINCINNATI OH 45036

SEVERSON SHELDON DOUGHERTY M
7300 WEST 147TH ST
SUITE 600
APPLE VALLEY MN 55124

SFM
PO BOX 583178
MINNEAPOLIS MN 55458-3178

SHAKOPEE MIDEWAKANTON
SIOUX COMMUNITY
2680 154TH ST NW
PRIOR LAKE MN 55372

SHIPPERS SUPPLY INC
401 - 11TH AVE S
HOPKINS MN 55343

SIMMA FLOTTEMESCH &
ORENSTEIN
2200 FOSHAY TOWER
821 MARQUETTE AVE
MINNEAPOLIS MN 55402

SMI CARR INC
PO BOX 3436
ABILENE TX 79604

SMITH SYSTEMS MFG
TX01226
PO BOX 830948
BIRMINGHAM AL 35283-0948

SOKKIA CORPORATION
PO BOX 411842
KANSAS CITY MO 64141

SOUTH DAKOTA DEPT OF REVENUE
PO BOX 5055
REMITTANCE CENTER
SIOUX FALLS SD 57117-5055

SPEE DEE DELIVERY SERVICE
PO BOX 1417
SAINT CLOUD MN 56302-1417

SPEEDWAY SUPERAMERICA INC
PO BOX 740587
CINCINNATI OH 45274-0587

SPIRAL BINDING CO
835 BONNIE LANE
ELK GROVE VILLAGE IL 60007

SPIROLL INTERNATIONAL CORP
50 ROBERTS DR
NORTH ADAMS MA 01247-0206

SPRINT
PO BOX 4181
CAROL STREAM IL 60197-4181

STAEDTLER
DEPT 0244
LOS ANGELES CA 90084-0244

STANLEY URBANSKI
1092 COOK AVE E
SAINT PAUL MN 55106

STAR TRIBUNE
PO BOX 1285
MINNEAPOLIS MN 55440-1285

STEPHEN HURST
1579B CLEMSON DRIVE
EAGAN MN 55122

STERLING DISK
15264 HERRIMAN BLVD
NOBLESVILLE IN 46060

STRICKLERS MACHINERY SERVICE
2541 GRAND ST NE
MINNEAPOLIS MN 55418

SUNDANTZ CREATIONS
15225 CARROUSEL WAY #3
ROSEMOUNT MN 55068

SUPERIOR SEALCOAT SERVICE INC
2800 W 55TH ST
MINNEAPOLIS MN 55410-2426

SYNEXX CORPORATION
39 PELHAM RIDGE DR
GREENVILLE SC 29615

SYNNEX
5845 COLLECTIONS CENTER DR
CHICAGO IL 60693

T MOBILE
PO BOX 790047
SAINT LOUIS MO 63179-0047

TDS METROCOM
30925 2ND STREET
PO BOX 1327
MONROE WI 53566-1327

TECH DATA CORPORATION
PO BOX 93836
CHICAGO IL 60673-3836

TECHNICAL IMAGE PRODUCTS
PO BOX 605
ELK GROVE VILLAGE IL 60007-0605

TECHNICAL REPRODUCTIONS
2101M BROADWAY
MINNEAPOLIS MN 55413

THOROUGHFBREAD SOFTWARE INTL
285 DAVIDSON AVENUE
SOMERSET NJ 08873

TIM HAHN
7173 LAKEVIEW DRIVE
CIRCLE PINES MN 55014

TIM MCDERMOTT
YOUR CLIENT CEI INC
SEVERSON SHELDON DOUGHERTY
MOLEND PA
7300 W 147TH ST STE 600
APPLE VALLEY MN 55124

TOTALFUNDS BY HASLER
PO BOX 31021
TAMPA FL 33631-3021

TRACY K ALBINSON
5 TIMBERGLADE ROAD
BLOOMINGTON MN 55437

TRANS ALARM INC
500 E TRAVELERS TRL STE 600
BURNSVILLE, MN 55337

TRENDEX
240 E MARYLAND AV
SAINT PAUL MN 55117-4618

U S F HOLLAND
DRAWYER #5833
PO BOX 79001
DETROIT MI 48279-5833

ULINE
2200 S LAKESIDE DR
WAUKEGAN IL 60085

ULRICH PLANFILES
2120 4TH AVE BOX 135
LAKEWOOD NY 14750

UNITED PARCEL SERVICE
LOCKBOX 577
CAROL STREAM IL 60132-0577

UPTIME SERVICE
4833 BRADFORD STREET
MAPLE PLAIN MN 55359

US BANK WORLDPERKS VISA
US BANK
PO BOX 790408
SAINT LOUIS MO 63179-0408

USPS HASLER
PO BOX 0527
CAROL STREAM IL 60132-0527

VDPC VEMCO
PO BOX 549
SAN DIMAS CA 91773-0549

VERNON JOHNSON
240 NORTH HIGH DRIVE
HUTCHINSON MN 55350

VERNON POLZIN
2100 VALKYRIE DR NW
ROCHESTER MN 55901

VIKING BUSINESS INTERIORS INC
7513 W 27TH ST
MINNEAPOLIS MN 55426

WASTE MANAGEMENT
PO BOX 9001054
LOUISVILLE KY 40290-1054

WATER SYSTEMS CO
PO BOX 1193
WINONA MN 55987-7193

WEBER ELECTRIC
577 SHOREVIEW PARK RD
SHOREVIEW MN 55126

WILDCAT GRAPHICS
PO BOX 270614
VADNAIS HEIGHTS MN 55127

WILLIAM TURNER
14705 DORY COURT
APPLE VALLEY MN 55124

WISCONSIN DEPT OF REV
2135 RIMROCK ROAD
MADISON WI 53713

WISCONSIN DEPT OF REV
PO BOX 930208
SAKES USE TAX RETURN
MILWAUKEE WI 53293-0208

XCEL ENERGY
PO BOX 9477
MINNEAPOLIS MN 55484-9477

XEROX CORPORATION
PNC BANK
PO BOX 827598
PHILADELPHIA PA 19182-7598

XPEDX
PO BOX 18452
CHICAGO IL 60618-0453

XYRON INC
15820 NORTH 84TH
SCOTTSDALE AZ 85260

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

BKY No. 09-40058

Imagetechn Services Corporation,

Chapter 7 Bankruptcy

Debtor.

**ORDER AUTHORIZING EXPEDITED SALE OF ASSETS OF
DEBTOR FREE AND CLEAR OF INTERESTS**

The above matter came before the Court on the Motion of Dwight R.J. Lindquist, Trustee ("Trustee") seeking an order authorizing sale of assets free and clear of interests.

Based upon all the files, records and proceedings herein, and the court being fully advised in the premises,

IT IS HEREBY ORDERED:

1. The Notice of the sale motion and of the hearing was sufficient under the circumstances.
2. The Trustee is entitled to expedited relief.
3. The Trustee is authorized to sell the "Property" as defined in the Verified Notice of Hearing and Motion by way of auction with the exception that the Trustee is not approved to sell the Debtor's cash, bank or investment account balances, accounts receivable, claims, security deposits or prepaid expenses.
4. The assets authorized to be sold specifically include all of Debtor's assets, whether scheduled in Debtor's Schedule B and its attachments or otherwise owned by the Debtor.
5. The Property sold shall be free and clear of any interest in such property pursuant to 11 U.S.C. §363(a), (b) and (f) with such interests, if any, attaching to the proceeds of sale with the

same priority, dignity and effect as such interests existed pre-petition.

6. The proceeds, after necessary closing adjustments, as provided in the Trustee's Notice of Hearing and Motion, shall be deposited in the Trustee's account and held subject to further order of the Court.

7. The Trustee is authorized to pay the costs of sale, as set forth in the motion, including the auctioneer fees, from the proceeds of such sale.

8. The Purchaser will have acted in good faith within the meaning of 11 U.S.C. §363(m).

9. Notwithstanding Fed. R. Bankr. P. 6004(g), this Order is effective immediately.

BY THE COURT:

Dated: _____

Nancy C. Dreher
Chief U.S. Bankruptcy Court Judge

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